No. 3856.

IN THE

United States
Circuit Court of Appeals,

FOR THE NINTH CIRCUIT.

United States of America,
Appellant,

vs.

Title Insurance and Trust Company, a corporation, Security Trust and Savings Bank, a corporation, Harry Chandler, O. P. Brant, M. H. Sherman and E. P. Clark,
Appellees.

BRIEF FOR APPELLEES.

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BRIEF FOR APPELLEES.

Learned counsel for appellant, in their hundred odd pages of brief filled with evidences of much labor and learning, seek to induce this court to set aside rules of property established by the decisions of the highest court of this state and this nation that have stood unchallenged for nearly a quarter of a century and on the basis of which innumerable property transactions have taken place and investments running into untold millions and perhaps hundreds of millions of dollars have been made. Since the decision in the case

of *Barker v. Harvey,* by the Supreme Court of California in 1899 (reported in 126 Cal., page 262), and the affirmance of that decision in the unanimous opinion of the Supreme Court of the United States in 1901 (181 U. S. 481), the legal world and the business world have understood that the questions therein decided were settled. They certainly were entitled so to consider in the face of the unanimous decision of the Supreme Court of the United States, which directly overrules every contention advanced by appellant here. As above noted, transactions involving untold millions have been made on the faith of that and previous similar decisions. Ranches have been bought and sold and sold again. Subdivisions have been made. Towns and cities have grown up on property that was once used by Indians, the same as the property here in question, all on the faith of those decisions. These appellees purchased the property here in question in 1916 after the decision referred to had stood unchallenged for fifteen years. [Tr. p. 5.] For nearly a quarter of a century these decisions have stood unchallenged—the admitted and unquestioned law of the land. Learned counsel now seek to have this court reopen the question, overrule the decisions of the Supreme Court of the United States, and introduce confusion and chaos into innumerable titles to property. We assume that it needs no citation of authorities to show that under such circumstances and after such a lapse of time, the court will not reopen such question, but that the law which has stood for so many years may be deemed the settled law of the land.

Learned counsel for appellant suggest several times that appellees rely upon only one decision, the case of *Barker v. Harvey,* above referred to (126 Cal. 262 and 181 U. S. 481). This is not strictly true, for the decisions of the Supreme Court of the United States rendered prior to the decision in *Barker v. Harvey* made that decision inevitable and led the Supreme Court of California to overrule its previous decision in the case of *Byrne v. Alas,* 74 Cal. 628, and similar decisions, and to announce the rule in *Harvey v. Barker* which was affirmed on appeal to the Supreme Court of the United States. But the very fact that the rule of *Barker v. Harvey* has stood unchallenged and unquestioned during all the years since it was rendered, that it has been accepted and acted upon as the law, both by the courts, the bar and the business world, makes it all the more important that the rule of law which it announces shall not now be reopened.

Every contention here advanced by appellant was advanced in *Barker v. Harvey* and every such contention was expressly and directly overruled in that case. Learned counsel evidently appreciate this fact. They argue at length that the decision as announced by the Supreme Court of the United States is wrong, assert that it is mere dictum, and at the conclusion of their brief endeavor to distinguish it by dwelling upon minor differences of fact between that case and the case at bar which have no bearing upon the principles of law announced.

Certainly nothing more will be necessary for this court than to read the decision in *Barker v. Harvey* to

see that the propositions of law there announced are absolutely determinative of the case at bar, and that the decision rendered in this case by the learned trial court cannot be reversed except by overruling that case. Whatever this court might think of the merits of the legal question involved, were it an open question, still, if the decision in *Barker v. Harvey* is to be overruled it must be done by the court which announced it, and until so overruled must stand as the law of the land.

The facts in *Barker v. Harvey,* as stated by the Supreme Court (181 U. S. at page 482) were as follows:

> "The facts in the cases are so nearly alike that it is sufficient to consider only the first. The land in question is within the limits of the territory ceded to the United States by the treaty of Guadalupe Hidalgo, February 2, 1848. 9 Stat. 922. Generally speaking, the plaintiffs claim title by virtue of a patent issued to John J. Warner on January 16, 1880, in confirmation of two grants made by the Mexican government. On the other hand, the defendants do not claim a fee in the premises, but only a right of permanent occupancy by virtue of the alleged fact that they are Mission Indians, so called, and had been in occupation of the premises long before the Mexican grants, and, of course, before any dominion acquired by this government over the territory; insisting, further, that the government of Mexico had always recognized the lawfulness and permanence of their occupancy, and that such right of occupancy was

protected by the terms of the treaty and the rules of international law."

The patent to Warner, under which plaintiffs claimed, contained the identical language with regard to the interests of third persons which is contained in the patent under which appellees claim in the case at bar, to-wit:

"But with the stipulation that in virtue of the 15th section of the said Act (March 3, 1851) the confirmation of this claim and this patent 'shall not affect the interests of third persons.'"

It was held that the defendants had no right or interest in the land and that the plaintiffs should have a decree quieting their title.

It was contended there, as it is contended here, that the Indians' right of occupancy was protected by the treaty of Guadalupe Hidalgo. The answer of the Supreme Court was that this was purely a political question. That it was met by Congress by the Act creating the Land Commission requiring all persons claiming any land in the ceded territory to present their claims to the Commission and have their rights thereto fixed and adjudicated, *and that a failure so to present such claims and have them adjudicated worked an abandonment of all such rights.* The court pointed out that it had already held in *Botiller v. Dominguez,* 130 U. S. 238, and numerous other cases down to and including *Florida v. Furman,* 180 U. S. 402, that this applied not only to incomplete or inchoate rights or titles such as were claimed by the Indians, but even to complete

and perfect titles. Referring to the act, the court, quoting from *Thompson v. Los Angeles Farming etc. Co.,* 180 U. S. 72, said (page 490):

> "'Every question which could arise on the title claimed could come to and receive judgment from this court. The scheme of adjudication was made complete and all the purposes of an act to give repose to titles were accomplished. And it was certainly the purpose of the act of 1851 to give repose to titles. It was enacted not only to fulfill our treaty obligations to individuals, but to settle and define what portion of the acquired territory was public domain. It not only permitted *but required* all claims to be presented to the board, and *barred all from future assertion* which were not presented within two years after the date of the act.'" (Italics ours.)

It was contended there, as it is contended at great length in the brief of appellant in this case, that the Indians were not required to present their claim to occupy lands to the Land Commission. This claim was expressly overruled and held untenable. (See pages 490 to 492.) Among other things, the court said (page 490):

> "As between the United States and Warner, *the patent is as conclusive of the title of the latter as any other patent from the United States* is of the title of the grantee named therein. As between the United States and the Indians, their failure to present their claims to the land commission within the time named made the land within the language of the statute 'part of the public domain of the United States.' Public do-

main' is equivalent to 'public lands,' and these words have acquired a settled meaning in the legislation of this country. 'The words "public lands" are habitually used in our legislation to describe such as are subject to sale or other disposal under general laws.' * * * So far, therefore, as these Indians are concerned the land is rightfully to be regarded as part of the public domain and subject to sale and disposal by the Government, and the Government has conveyed to Warner." * * *

"If these Indians had any claims founded on the action of the Mexican government they abandoned them by not presenting them to the commission for consideration, and they could not, therefore, in the language just quoted, 'resist successfully any action of the government in disposing of the property.' If it be said that the Indians do not claim the fee, but only the right of occupation, and, therefore, they do not come within the provision of section 8 as persons 'claiming lands in California by virtue of any right or title derived from the Spanish or Mexican government,' it may be replied that a claim of a right to permanent occupancy of land is one of far-reaching effect, *and it could not well be said that lands which were burdened with a right of permanent occupancy were a part of the public domain and subject to the full disposal of the United States.* There is an essential difference between the power of the United States over lands to which it has had full title, and of which it has given to an Indian tribe a temporary occupancy, and that over lands which were subjected by the action of

> some prior government to a right of permanent occupancy, for in the latter case the right, *which is one of private property,* antecedes and is superior to the title of this government, and limits necessarily its power of disposal. Surely a claimant would have little reason for presenting to the land commission his claim to land, and securing a confirmation of that claim, *if the only result was to transfer the naked fee to him, burdened by an Indian right of permanent occupancy.*" (Italics ours.)

The direct repugnance of appellant's arguments to the decision in *Barker v. Harvey* is well illustrated by its arguments on pages 32 and 33 of its brief herein. It contends that even though the Indians never presented any claims to the land commission, that, unless acquired by the government, their superior right to the land endures "for the tribal life, i. e., *throughout the successive generations through which the tribe endures*" (page 32). And again they argue (on page 33) that where the government granted the fee by patent, after adjudication by the land commission as in the case at bar, "The fee which ordinarily would carry full right of possession and use, *is for the time being only a naked fee.*" By the words, "for the time being," the appellant clearly means for the tribal life, that is, "throughout the successive generations through which the tribe endures." To hold as appellant seeks to have this court hold, would be to bring about this very condition and would result in a state of chaos of land titles that simply staggers the imagination.

It was contended in *Barker v. Harvey,* as it is contended at great length in the case at bar, that the rights of the Indians were saved by the provision in the patent, which was identical with the provision in the patent here involved, to the effect that the patent should not "affect the interests of third persons." The court answered this contention in the following language, (pages 490-491):

> "It is true that the patent, following the fifteenth section of the act, in terms provides that the patent shall not 'affect the interests of third persons,' but who may take advantage of this stipulation? This question was presented and determined in *Beard v. Federy*, 3 Wall. 478, and the court, referring to the effect of a patent, said (pp. 492, 493):
>
> 'When informed, by the action of its tribunals and officers, that a claim asserted is valid and entitled to recognition, the government acts, and issues its patent to the claimant. This instrument is, therefore, record evidence of the action of the government upon the title of the claimant. By it the government declares that the claim asserted was valid under the laws of Mexico; that it was entitled to recognition and protection by the stipulations of the treaty, and might have been located under the former government, and is correctly located now, so as to embrace the premises as they are surveyed and described. As against the government this record, so long as it remains unvacated, is conclusive. * * * The term 'third persons,' as there used, does not embrace all persons other than the United States and the claimants, but only those who hold superior titles such as

> will enable them to resist successfully any action of the government in disposing of the property.' "

It was contended in *Barker v. Harvey*, as it is contended at great length here, that "the Indians were prior to the cession the wards of the Mexican government and by the cession became the wards of this government; that therefore the United States are bound to protect their interests and that all administration, if not all legislation, must be held to be interpreted by, if not subordinate to, this duty of protecting the interests of the wards." This contention the court answers by pointing out that this obligation is one which rests upon the political department of the government and that "this court has never assumed, in the absence of congressional action, to determine what would have been appropriate legislation or to decide the claims of the Indians as though such legislation had been had." The court then pointed out that Congress had expressly required the land commission to report on these Indians; that it is assumed that the commission has performed that duty and that Congress did all that it deemed necessary in the matter, and if it failed to act, it is fairly to be deduced that Congress considered that they had no claims which called for special action. (See pages 492-493.)

It is thus to be seen that *Barker v. Harvey* expressly takes up and answers nearly every argument advanced by appellant in the case at bar, and that it does directly and in terms decide adversely every contention which appellant here makes. Indeed, when the court decides

that whatever rights the Indians had or claimed, they *abandoned them* by not presenting them to the land commission within the time specified in the statute, the entire case of appellant falls to the ground. Appellant in the case at bar presents two branches to the argument as to why the Indians were not required to present their claims: First, that their claims antedated either the Mexican or the American law; second, that their claims have been recognized and fortified by the language of the Mexican grant. But as has already been noted in *Barker v. Harvey,* the court directly met and overruled both these contentions in the language which we have quoted from pages 491-492 of the opinion. However much learned counsel may dwell upon and seek to magnify minor and immaterial differences between the facts in *Barker v. Harvey,* and the case at bar, it cannot be disputed that that decision squarely holds that by failing to present them to the land commission, the Indians waived and abandoned any claim that they had either arising out of natural law or of any confirmation by the Mexican government. Likewise, it cannot be denied that for nearly a quarter of a century both the legal and business world has acted upon this decision as the established law of the land. On the basis of it vast properties have been sold and sold and sold again; the properties have been subdivided and developed; towns and cities have grown up; titles of inestimable value have changed hands time and again, all in reliance upon this, the unanimous decision of the highest court of the land. So long as that decision stands, the case of appellant

must fall to the ground. We do not believe that any court will, at this date, reopen the question. But certain it is that no court except the court which rendered that decision can reopen it.

Learned counsel for appellant contends that the entire case of appellees rests on the decision of *Barker v. Harvey*. If this were true, it would be a complete answer to appellant's case. But such is by no means the case. *Barker v. Harvey* does, it is true, squarely decide that appellant's case is without merit, and naturally we rest primarily upon that decision. But if *Barker v. Harvey* had never been decided, still the other decisions of the Supreme Court of the United States rendered prior thereto would lead irresistibly to the same result that was there announced. As we have already called to the court's attention, this is so true that the Supreme Court of California, in deciding the case of *Barker v. Harvey*, was forced to and did overrule its previous decisions. A number of the decisions of the United States Supreme Court rendered prior to *Barker v. Harvey* might be cited, but for our present purpose it is sufficient to cite the following:

Beard v. Federy, 3 Wall. 478;
Botiller v. Dominguez, 130 U. S. 238;
Knight v. U. S. Land Ass'n, 142 U. S. 161;
Thompson v. Los Angeles Farm & Milling Co., 180 U. S. 72.

In *Beard v. Federy* the facts were these: The Bishop of Monterey had presented a claim to the land

commission for confirmation to him of certain Mission lands, claiming that under the laws of Spain and the laws of Mexico he was entitled to church property without any formal grant. His claim was confirmed by the commission and the patent issued in due course. Fedéry, claiming title through the Bishop of Monterey, brought an action of ejectment against Beard, who claimed under an alleged grant of the same lands from one Pico, governor of California. This alleged grant, however, had never been presented to the commission for confirmation. On the trial, the court excluded all evidence of the grant of Governor Pico. Judgment was rendered in favor of Fedéry and defendant appealed to the Supreme Court of the United States. The judgment was affirmed. The case received elaborate consideration in an opinion written by Mr. Justice Field and concurred in by the entire court. It was held that the legislation creating the land commission and providing that all claims not presented to it within a specified period for confirmation should be considered and treated as abandoned, is entirely constitutional; that the patent issued by the government, so long as it remains unvacated, is conclusive as against the government and all parties claiming under it; that the term, "third persons," mentioned in the fifteenth section of the act (against whom a decree and patent are not conclusive), does not embrace all persons other than the United States and the claimants, but only those who hold superior titles, such as will enable them to resist successfully any action of the

government in disposing of the property. The opinion is too long to quote in full, and we respectfully refer the court to the official report. For the present we simply call attention to the following: On page 489 the court points out that all claims of right or title to real estate must be presented to the commission, even though they "rest only in the general law of the land," as is usually the case with the title of municipal bodies, under the Spanish and Mexican systems, to their common lands. Exactly the same considerations apply to the kind of title claimed for the Indians here. On page 490 the court points out that the statute, in effect, declares that if claims are not presented within the period designated, the government will not recognize nor confirm them, nor take any action for their protection, but that the claims will be considered and treated as abandoned. As to the effect of the patent, we would respectfully invite the court's attention to the discussion on pages 492-493. In the same discussion the court holds that the term "third persons," as used in the statute, means only those persons who hold such superior titles that they could successfully resist any action of the government in disposing of the property.

In *Botiller v. Domingues,* 130 U. S. 238, the facts were as follows: Plaintiff brought an action in ejectment against defendants. The title of plaintiff was a grant made by the government of Mexico, but no claim thereon had ever been filed with the commission, and hence no patent had issued. Defendants claimed no title under the Mexican government, but were settlers

who had entered upon the land to take up preemption or homestead claims. Plaintiff proved a perfect title under the Mexican law and the trial court rendered judgment in his favor. This was affirmed by the Supreme Court of California. The case was then appealed to the United States Supreme Court. The question was squarely (presented) as to whether a title that was *perfect* under the Mexican law was lost through not being presented for confirmation to the commission. In a unanimous decision delivered by Mr. Justice Miller, it was held that the title even though perfect under the Mexican law was lost and abandoned if not presented for confirmation, and the judgment of the California courts was reversed. The opinion in this case also is too long for extensive quotation. The court pointed out that a final and authoritative determination of titles in the new country was necessary; that it must be known as to what property some person or persons could claim a private title or right and as to what property the government of the United States could say "this is my property," and so make any disposition as it chose; that this necessity applied with equal force to perfect titles and to imperfect or inchoate titles; that there was nothing unconstitutional or improper about requiring all persons who claim titles of any kind or nature to come into court and set them up; that

> "It is a necessary part of a free government, in which all are equally subject to the laws, that whoever asserts rights or exercises powers over

> property may be called before the proper tribunals to sustain them."

The court quoted from previous opinions showing that it had already been held that the Act of 1851 comprehended "all private claims to land in California" and also

> "These acts of Congress do not create a voluntary jurisdiction that the claimant may seek or decline. All claims to land that are withheld from the board of commissioners during the legal term for presentation, *are treated as non-existent,* and the land as belonging to the public domain." (Page 253.) (Italics ours.)

In *Knight v. U. S. Land Association,* 142 U. S. 161, there was involved the question of the right of the Pueblo of San Francisco to certain lands lying below tidewater. The case was a somewhat complicated one on account of various differences of fact of no particular importance to the case at bar. The importance of the decision for the purpose of the case at bar is this. The court held (page 184) that the patent which it issued to the Pueblo of San Francisco upon confirmation of its claim by the land commission

> "is conclusive not only as against the government and all parties claiming under it by titles subsequently acquired, but also as against all parties except those who have a full and complete title acquired from Mexico anterior in date to that confirmed by the decree of confirmation. This conclusion is fully sustained by the decisions of this court."

The court then reviews a number of its previous decisions, including *Beard v. Federy, supra,* from which it quotes at length.

In *Thompson v. Los Angeles Farming & Milling Co.,* 180 U. S. 72, plaintiff sued in ejectment, the suit involving certain lands of the Rancho ex-Mission de San Fernando. Plaintiff derived title from a deed of grant made by Governor Pico, then governor of California, in 1846. This grant had been confirmed by the commissioners and a patent issued on such confirmation. The defense urged was that the grant by Governor Pico was illegal and invalid on its face for two reasons: First, because it was *ultra vires* of his authority, and second, because the lands attempted to be granted were lands belonging to the Mission of San Fernando and not legally subject to the granting power of the governor. It was also claimed that the Board of Land Commissioners had no jurisdiction over the matter because these facts appeared on the face of the proceedings before that board. In the trial court and the Supreme Court of California plaintiff recovered judgment, and on appeal to the Supreme Court of the United States this judgment was unanimously affirmed. In the course of the opinion, referring to the broad powers of the Board of Land Commissioners, the court said:

> "Legal procedure could not afford any better safeguards against error. Every question which could arise on the title claimed could come to and receive judgment from this court. The scheme of adjudication was made complete and all the pur-

> poses of an act to give repose to titles were accomplished. And it was certainly the purpose of the act of 1851 to give repose to titles. It was enacted not only to fulfill our treaty obligations to individuals, but to settle and define what portion of the acquired territory was public domain. It not only permitted *but required* all claims to be presented to the board, and *barred all from future assertion* which were not presented within two years after the date of the act." (Italics ours.)

The court then cited and quoted from *Beard v. Federy, supra,* and *More v. Steinback,* 127 U. S. 70, reaffirming the doctrine that the only persons who might question the conclusive effect of the patent were those who held superior titles to enable them to resist successfully any action of the government in disposing of the property.

A number of other cases might be cited, but the foregoing are, we think, the principle ones and are sufficient to establish the proposition that even if the case of *Barker v. Harvey* had never been decided, the case attempted to be made out by the appellants here must necessarily have failed. The effect of these decisions, as we have already pointed out, was to lead the Supreme Court of California in deciding *Barker v. Harvey* to overrule its previous decisions and to leave to the Supreme Court of the United States in deciding the case but little to do except to quote from and reannounce the rule established by these authorities. It is clear, therefore, that until these cases, as well as *Barker v. Harvey,* are overruled, the case attempted to be made by appellants must fall.

Counsels' Attempt to Distinguish Barker v. Harvey.

In the last of their brief, learned counsel for appellant make some effort to distinguish *Barker v. Harvey* from the case at bar. They do not, however, make any attempt, so far as we have found, to distinguish it from the several cases which we have just cited. But their attempts to distinguish *Barker v. Harvey* are, we submit, entirely futile. They rest upon trifling differences of fact and do not at all go to the principles of law which Barker v. Harvey and the other cases to which we have last referred establish. In the first place, as an attempted distinction, they say that in *Barker v. Harvey* the Indians had voluntarily abandoned their occupancy of the land in question—in effect, say that the Supreme Court might have put its decision on this ground alone, and therefore conclude "the legal speculations in the first part of the Barker case are therefore dicta." (Page 102.) Nothing could be more unsound. Even if it be conceded that the Supreme Court *might* have put its decision on the ground that the lands had been abandoned by the Indians, still it might equally well have put its decision on the ground on which it did put it—that by a failure to present their claims to the Land Commissioners the Indians abandoned any rights they might have had, whether those rights arose by general law or by the terms of a Spanish or Mexican grant. The fact is that the Supreme Court did squarely decide the case on the ground that the failure to present their claims amounted to an abandonment. It spent many pages

discussing this branch of the case, showing that on principle, as well as by its previous decisions, this conclusion was irresistible. With all due deference to the learned counsel for appellant, to say that all this is mere dictum approaches the point of absurdity. We say this in no spirit of censuring counsel. It is not the first time that attorneys who were seeking to have this rule overturned have been forced to contend that the decision of the Supreme Court of the United States settling a point against them was dictum. The same thing was urged by unsuccessful counsel in the case of *Botiller v. Domingues,* from which we have heretofore quoted. (130 U. S. 238.) At page 254 of the opinion the Supreme Court refers to a similar contention by unsuccessful counsel there in this language:

> "It is said by counsel for defendant in error that there would never have been any doubt upon this question were it not for certain dicta in the cases here referred to. We are unable to perceive any sufficient reason for calling these expressions of the court, whose judgment must be final on the subject, 'dicta,' for we feel bound to say that they were observations pertinent to the matter under consideration, and seem to have met the entire approbation of the court in whose behalf they were uttered; and as they embraced a very considerable period of time, during which a contrary opinion would have saved much labor to the court, we must believe that the opinions thus expressed without variation were the well-considered views of this court when they were delivered."

When *Barker v. Harvey* was before the Supreme Court of California a similar argument was made with reference to the decision in *Botiller v. Dominguez,* and similar cases which we have referred to, by saying that they were mere dicta. In reply the court said (pages 275-276):

> "Appellants' counsel, to ward off the effect of these decisions, particularly the Botiller case, characterize much of the language used in such opinions as pure *dictum.* But the opinion in this latter case, as well as the others quoted, have been referred to and adopted by the same court in subsequent cases. In *Knight v. United States Land Assn, supra,* the court say: 'The patent, being thus conclusive, can only be resisted by those who hold paramount title to the premises from Mexico and antedating the title confirmed.' (*De Guyer v. Banning,* 167 U. S. 723.)
>
> "When unable to meet and answer opinions of the court, it is a custom of counsel, which would be 'more honored in the breach than the observance,' to characterize the language used as mere *dictum.* The answer to such criticism is well stated in the Botiller case itself: 'We are unable to perceive any sufficient reason for calling these expressions of the court, whose judgment must be final on the subject, *dicta,* for we feel bound to say that they were observations pertinent to the matter under consideration, and seem to have met the entire approbation of the court in whose behalf they were uttered, and, as they embrace a very considerable period of time during which a contrary opinion would have saved much labor to the court, we must believe that the opinions

> thus expressed without variation were the well-considered views of this court when they were delivered.' "

Little more need be said as to counsel's attempts along this line. The question as to whether the Indians lost any rights they might have by failing to present them to the Land Commission was squarely before the Supreme Court and was squarely decided, and such decision has never been questioned.

Counsel's suggestion that one of the grants involved in the Barker case did not contain a provision protecting the rights of the Indians as ground of distinction is equally without merit. If the provision contained in the Mexican grant is the basis of the claim of the Indians' rights, it affords an extra and additional ground for requiring them to present their claim, since as to this, their claim of right is clearly founded upon an action of the Mexican government. It being the established law, as shown by the Botiller and other cases, that even a perfect grant of a fee under the Mexican government is lost and abandoned if not presented to the Land Commission, *a fortiori,* such a claim as the one here involved is abandoned if not presented, and as already pointed out in the Barker case (pages 491-492) the court held that whether the claim rested upon a reservation in the patent or a mere natural right of occupancy, their rights were abandoned if not presented to the Land Commission for confirmation.

The argument that the decision on this and other points in *Barker v. Harvey* is mere dicta has already been sufficiently answered.

The other alleged grounds of distinction are so thoroughly answered by a mere perusal of the decision itself, that we will not further discuss them.

That the patent under which these appellees hold is conclusive against both the appellant and the Indians is settled by the decisions hereinbefore referred to.

We have not attempted to follow in meticulous detail all of the suggestions contained in appellant's brief, but have endeavored to point out that both on principal and by direct and oft-repeated decisions of the Supreme Court of the United States, the features which control this case are thoroughly settled. Neither have we consumed the time of the court in discussing many of the propositions of a general nature advanced by the counsel, or in reviewing the large number of cases which they cite that discuss Indian reservations and other general matters having no direct bearing on the issues here involved. We have endeavored to present those decisions of the highest court of the land which do deal directly with the questions here involved. That those decisions do settle the principles which determine this case and that such principles have stood without being questioned for nearly a generation, cannot, we think, be successfully disputed. These appellees derain their title through a patent of the United States issued on confirmation by the Board of

Land Commissioners. They purchased on the faith of that patent and the decisions of the highest court of this land that it gave them a clear title free from any such claims as are now asserted. Under those decisions and the settled law of the land, they cannot now have that title transformed into a mere "naked fee," (to use the expression of counsel), charged with the burden of a prior and superior right in these Indians so long as the tribal life shall last.

The case of appellant is without merit and the decision rendered by the learned trial court is the only one that could be rendered consistent with the law of the land. That judgment should be affirmed; all of which is respectfully submitted.

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